(2)

No. 90-1799

Supreme Court, U.S.
FILED
JUN 18 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1990

DONALD PRUESSMAN, individually and on behalf of others similarly situated,

Petitioner,

v.

PARKER LEE McDONALD; LEANDER J. SHAW, JR.; ROSEMARY BARKETT; STEPHEN H. GRIMES; GERALD KOGAN; JOSEPH NESBITT; DANIEL PEARSON; THOMAS BARKDULL; HERBERT M. KLEIN; BERNARD JAFFE; THOMAS G. O'CONNELL; JOSEPH J. GERSTEN; RICHARD BRINKER; H. BERMAN; M. ERICE; DONNA CATTELL; AMALIA CONDE; RAFAEL MARTINEZ; JOHN PARSONS; DENNIS SHILLEN; LESLIE McCORMICK; JACKSON F. McCOY; EVELYN MERCHANT; JULIET MURPHY; F. LAURENS BROCK; STANFORD F. DERNIS; HENRY BURNETT,

Respondents.

Petition For A Writ Of Certiorari To The Eleventh Circuit Court Of Appeals

RESPONDENTS LESLIE McCORMICK AND JACKSON F. McCOY'S BRIEF IN OPPOSITION

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June 18, 1991

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QUESTIONS PRESENTED

Whether the instant petition for writ of certiorari is jurisdictionally barred where it has been filed more than ninety days after the December 21, 1990 judgment of the United States Court of Appeals for the Eleventh Circuit?

Whether the U.S. District Court properly dismissed Petitioner's claim on the basis of lack of subject matter jurisdiction where the complaint merely sought review of a Florida state trial court discovery order (permitting discovery of Pruessman's medical and/or psychiatric records) and where certiorari review of this discovery order had been denied by the Third District Court of Appeal of Florida and a petition for writ of mandamus was denied by the Florida Supreme Court?

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STATEMENT OF THE CASE AND FACTS

This petition follows an affirmance by the United States Court of Appeals for the Eleventh Circuit of a final order of the United States District Court of the Southern District of Florida which granted defendants'/respondents' motion to dismiss Pruessman's complaint.

Pruessman originally filed an action in the Eleventh Judicial Circuit in and for Dade County, Florida, alleging a violation of his civil rights by the improper use of the Florida Mental Health Act, Chapter 794, Florida Statutes (1981). In this state court action, discovery of Pruessman's medical and/or psychiatric records was sought by respondents Jackson F. McCoy and Leslie Ann McCormick in their capacity as counsel for their defendant client. Pruessman's objections to this discovery were overruled by the respondent state court trial judge, The Honorable Herbert M. Klein on September 19, 1988.

Subsequent to the entry of this order, Pruessman filed a petition for writ of common law certiorari to the Third District Court of Appeal of Florida which was denied. Respondents The Honorables Joseph Nesbitt, Daniel Pearson and Thomas Barkdull were the state district court of appeal judges who denied this petition on October 17, 1988.

Pruessman then filed a petition for writ of mandamus to the Florida Supreme Court. This petition was also denied. Florida Supreme Court Justices/respondents The Honorables Parker Lee McDonald, Leander J. Shaw, Jr., Rosemary Barkett, Stephen H. Grimes and Gerald Kogan denied Pruessman's petition for writ of mandamus on February 23, 1989.

Rather than attempting to gain final review of the state court order which permitted the discovery of Petitioner's past medical records, Pruessman filed suit in the United States District Court for the Southern District of Florida. His complaint sought to have the Federal District Court review and set aside the discovery order previously entered by the Florida trial court. In seeking review of the state court discovery order, Pruessman alleged that a conspiracy to deprive him of his civil rights existed among the state trial court judges, the state appellate judges, the Florida Supreme Court Justices, the Clerks of the Court and the defense attorneys in the original underlying state court action, including McCoy and McCormick. The U.S. District Court entered a final order dismissing Pruessman's complaint stating that

> The plaintiff has wrongfully invoked this court's original jurisdiction to entertain what is essentially a request for an appellate review of the . . . state court ruling. Therefore, the complaint in its entirety is dismissed, pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of jurisdiction over the subject matter.

Petitioner then appealed the final order of dismissal and on December 21, 1990 the United States Court of Appeals issued an opinion affirming the final order entered by the federal trial court and issued its judgment. The appellate court denied the suggestion for rehearing en banc on February 20, 1991. The instant petition for certiorari then followed.

REASONS THE PETITION SHOULD BE DENIED.

1. The petition is untimely.

A petition for writ of certiorari to the United States Supreme Court must be filed within ninety days from the entry of the judgment by the United States Court of appeals. Sup. Ct. R. 13; 28 U.S.C. §2101(c). Where a petition for rehearing has been timely filed, this ninety day period runs from the date of the denial of the petition. The Rule provides, however, that a suggestion for rehearing en banc does not have this same tolling effect.

Pruessman's petition for rehearing was treated by the United States Court of Appeals as a suggestion of rehearing en banc and therefore was insufficient to toll the time for filing the instant petition. Based upon the date of the United States Court of Appeals judgment which was entered December 21, 1990, the instant petition for writ of certiorari is barred by Sup. Ct. R. 13; 28 U.S.C. §2101(c) because it was not served until May 20, 1991.

2. The decisions of the Federal District Court and United States Court of Appeals were proper and were in accordance with settled law. Pruessman's suit in Federal District Court merely sought review of a Florida state trial court's discovery order in which review had previously been denied by both the Florida District Court of Appeal and the Florida Supreme Court. A Federal District Court may not review the final rulings of a state court, even if it is alleged that the actions of the state court were unconstitutional.

Pruessman attempted to invoke the district court's original jurisdiction under 28 U.S.C. §1331 and §1343 by

filing a complaint which asserted a civil rights violation by all court personnel to the underlying state court action, as well as the defense attorneys, McCoy and McCormick, who had sought discovery of Pruessman's past medical and psychological records in preparation for their client's defense in that state action. The state trial court permitted this discovery. Both the Florida Third District Court of Appeal and the Florida Supreme Court declined to review the matter. When Pruessman filed his subsequent claim in Federal District Court against all involved judges, justices, attorneys and clerks, he merely sought appellate review of a state court decision. It is well settled that a party may not bring an action in Federal District Court which seeks appellate review of the final ruling of a state court. *District of Columbia Court of Appeal v. Feldman*, 460 U.S. 462, 476, 103 S. Ct. 1303, 1311, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 150, 68 L.Ed. 362 (1923).

In the *Rooker, supra,* case this Court prohibited a Federal District Court from reviewing an Indiana state court decision despite the fact that constitutional error was alleged. The decision explains that a Federal District Court may not review the rulings of a state court. District Courts may only exercise original jurisdiction and the Supreme Court has exclusive jurisdiction to review state court decisions for alleged constitutional error.

More recently, the question of a Federal District Court's jurisdiction to review a state court ruling has been discussed in the case of *Feldman, supra*. Feldman was denied admission to the District of Columbia bar by the District of Columbia Court of Appeals because of his failure to graduate from a law school accredited by the

American Bar Association. Feldman then sued in Federal District Court claiming that the District of Columbia Court of Appeals violated the Fifth Amendment and Sherman Act by refusing to admit him to the bar, and sought an injunction either requiring his admission or allowing him to take the bar examination. This court held that the district court did not have jurisdiction to review the District of Columbia Court of Appeals' decision because the federal issues were "inextricably intertwined" with that decision. *Id.* at 1316-1317. The decision reiterated that the district court may only review a state court decision which is nonjudicial in nature.

In the instant case, Pruessman sued in Federal District Court seeking review of a state trial court discovery order which was clearly judicial in nature. Jurisdiction is not conferred merely because Pruessman alleged that the defense attorneys acted unconstitutionally and in violation of his civil rights by seeking discovery of his medical and psychological record to prepare their client's defense or by asserting that the state court judges unconstitutionally permitted discovery of such records. The law is clear that a Federal District Court does not have jurisdiction over a state court's decision even if the challenge to the state court proceedings asserts that the state court's actions were unconstitutional. *Feldman*, 460 U.S. at 488, 103 S. Ct. at 317; *Reynolds v. State of Georgia*, 640 F.2d 702, 705 (5th Cir. 1971).

In the *Reynolds, supra,* decision the plaintiff's suit alleged that she was denied due process of law by the Georgia courts and that her civil rights were violated. The Fifth Circuit held that the district court lacked jurisdiction and explained:

> The fact that an arbitrary judgment of a state court may have breached the Constitution does not necessarily mean that such a judgment gives rise to a claim for violation of constitutional and civil rights in Federal District Court. If to review such a judgment for constitutional violations of that character is essentially an exercise of appellate jurisdiction, a Federal District Court, whose jurisdiction is strictly original, has no power to entertain such a suit. *Reynolds, supra* at 705.

Pruessman, despite his assertions of constitutional violations, inappropriately attempted to invoke the district court's original jurisdiction. Both the district court and the United States Court of Appeals recognized the impropriety of his action in their rulings.

The fact that Pruessman attempted to assert claims for civil rights violations under 42 U.S.C. §1983 and §1985 did not provide jurisdiction for his claim in Federal District Court. *Staley v. Ledbetter,* 837 F.2d 1016 (11th Cir. 1988); *Haggerty v. Succession of Clement,* 749 F.2d 217 (5th Cir. 1984). As stated in *Staley, supra:*

> The federal courts are not a forum for appealing state court decisions . . . because "federal review of state court decisions is entrusted solely to the Supreme Court, [the lower federal courts] may not decide federal issues that are raised in state proceedings and 'inextricably intertwined' with the state court's judgment." *Staley* at 1018.

In the *Haggerty, supra,* case, the plaintiff filed an action under 42 U.S.C. §1983 against the executor of his aunt's estate, the estate itself, the state trial court judge and the clerk of the court alleging that they violated his civil rights when his action contesting the validity of his aunt's will was dismissed by the trial court. The Federal

District Court was found to have no jurisdiction over the action because the plaintiff merely sought review of a state adjudication. The court stated that "a plaintiff may not seek reversal of a state court judgment simply by casting his complaint in the form of a civil rights action." *Haggerty, supra* at 220. *See also: Blue Cross & Blue Shield of Maryland, Inc. v. Weiner,* 868 F.2d 1550 (11th Cir. 1989) (district court has no jurisdiction over nonconstitutional federal claims adjudicated previously in state court); *Lampkin-Asam v. Supreme Court of Florida,* 601 F.2d 760 (5th Cir. 1979) (district court has no authority under 42 U.S.C. §1983 to reverse or modify judgments of state courts).

The Federal District Court correctly recognized this controlling law when it dismissed Pruessman's complaint. The United States Court of Appeals properly followed this precedent in affirming the decision of the trial court.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that Donald Pruessman's Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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1. Eleventh Circuit Decision dated December 21, 1990. . . . . App. 1

2. Eleventh Circuit Judgment dated December 21, 1990. . . . . App. 2

3. Order denying Petition for Rehearing and Suggestion of Rehearing En Banc dated February 20, 1991. . . . . App. 4

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-5020
Non-Argument Calendar

D.C. Docket No. 89-1613-Civ-JLK

DONALD PRUESSMAN, individually
and on behalf of all others
similarly situated,

Plaintiff-Appellant,

versus

HON. PARKER LEE McDONALD,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(December 21, 1990)

Before TJOFLAT, FAY and ANDERSON, Circuit Judges.

PER CURIAM:

The judgment is affirmed for the reasons stated in the Final Order Granting Defendants' Motion to Dismiss entered by Chief Judge James Lawrence King under date of November 8, 1989.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-5020
Non-Argument Calendar

D.C. Docket No. 89-1613-Civ-JLK

DONALD PRUESSMAN, individually
and on behalf of all others
similarly situated,

Plaintiff-Appellant,

versus

HON. PARKER LEE McDONALD,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before TJOFLAT, Chief Judge, FAY and ANDERSON, Circuit Judges

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 34-3;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the District Court appealed from, in this cause be and the same is hereby AFFIRMED;

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered: December 21, 1990
For the Court: Miguel J. Cortez, Clerk

By: /s/ Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: **MARCH 1, 1991**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-5020

DONALD PRUESSMAN, individually
and on behalf of all others
similarly situated,

Plaintiff-Appellant,

versus

HON. PARKER LEE McDONALD,
ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida

(Filed Febr. 20, 1991)

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC

(Opinion December 21, 1990, 11th Cir., 199__, ___F.2d___).

(February 20, 1991)

Before: TJOFLAT, Chief Judge, FAY and ANDERSON, Circuit Judges.

PER CURIAM:

(✓) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active

service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5, the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Peter Fay
UNITED STATES DISTRICT JUDGE

SUPREME COURT OF FLORIDA

THURSDAY, FEBRUARY 23, 1989

DONALD PRUESSMAN,	*	
	*	
Petitioner,	*	CASE NO.
v.	*	73,598
	*	
HERBERT M. KLEIN, Judge, et al.,	*	
	*	
Respondents.	*	
	*	
* *		

Upon consideration of the Petition for Writ of Mandamus, it is ordered by the Court that said petition be and the same is hereby denied.

McDONALD, Acting C.J., SHAW, BARKETT, GRIMES and KOGAN, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

TC

cc: Mr. Donald Pruessman
Hon. Herbert M. Klein, Judge
Hon. Bernard Jaffe, Judge
Hon. Robert A. Butterworth

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1988

OCTOBER 17, 1988

DONALD PRUESSMAN,

Petitioner,

vs.

GORDON LEWIS, DR. JOHN T. MacDONALD FOUNDATION doing business as DOCTORS HOSPITAL, CITY OF CORAL GABLES, and COMMUNITY HEALTH OF SOUTH DADE, INC.,

Respondents.

CASE NO. 88-2433

CIRCUIT NO. 86-22648

Upon consideration, the relief sought in this petition for writ of certiorari is hereby denied.

A True Copy
ATTEST:
LOUIS J. SPALLONE
Clerk District Court of
Appeal, Third District
By Evelyn A. Hillman
Deputy Clerk

cc: Donald Pruessman
Stanford F. Dernis
F. Laurens Brock
John W. Parsons
Henry Burnett
Jackson F. McCoy
Honorable Herbert M. Klein
Richard P. Brinker

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO: 86-22648 CA 01

DONALD PRUESSMAN,

Plaintiff,

vs.

GORDON LEWIS: DR. JOHN
T. MacDONALD FOUNDATION,
etc., et al,

Defendants.
_____/

There is pending before the Court the issue of whether the Defendants may take the depositions of and have produced medical records from various doctors who have in the past treated the Plaintiff. The Paintiff [sic] has filed a series of pleadings objecting to all such depositions and any such production, on the basis of "privilege" and "relevancy"

THIS Court having heard argument of counsel and being otherwise fully advised in the premises, it is thereupon

ORDERED AND ADJUDGED:

That all such objections be and the same are hereby denied.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this 19 day of September, 1988.

/s/ Herbert M. Klein
CIRCUIT JUDGE